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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/925,867

08/09/2001

James J. Fitzgibbon

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3851

22242

7590

06/15/2005

FITCH EVEN TABIN AND FLANNERY  
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EXAMINER

JENKINS, KIMBERLY YVETTE

ART UNIT

PAPER NUMBER

2635

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

6

<b>Office Action Summary</b>	<b>Application No.</b> 09/925,867	<b>Applicant(s)</b> FITZGIBBON, JAMES J.	
	<b>Examiner</b> Kimberly Hamilton	<b>Art Unit</b> 2635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 January 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 and 23 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-21 and 23 is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 January 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>24 Jan 2005</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Amendment*

1. Amendments filed January 18, 2005 of Application No. 09/925867 regarding the abstract, specification, and amended claims 1-6, 8-14, 17-20, and 23 and cancelled claim 22; Figs. 3-4, 6A and 8A have been acknowledged and can be entered.

### *Response to Arguments*

2. Examiner acknowledges arguments filed on January 18, 2005 of Application No. 09/925867 regarding claims 2-21 and 23 are persuasive; however, arguments disclosed on p. 19, paragraph 3 regarding claim 1 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Treharne et al. (US 5416471).

### *Drawings*

3. The drawings Figs. 5 and 6A are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference character(s) mentioned in the description:

- ❖ Pg. 9, line 19 discloses line 200 (Fig. 5)
- ❖ Pg. 5, lines 6 and 17 disclose receiver 80;
- ❖ Pg. 10, lines 23-26 and 30-31 disclose drive transistor 105a, relay 105b, driver transistor 107a and relay 107b; pg. 10, lines 36-39 switch 151 (Fig. 6)

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings of Figs. 3, 5, 6A and 8A are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description:

❖ Fig. 6A '82'

❖ Fig. 8B step '543'

Corrected drawing sheets, or amendment to the specification to add the reference character(s) in the description, are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

*Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Treharne et al. (US 5416471).

Regarding claim 1, Treharne, who teaches a method of programming a spare key into a security system, expressively discloses the reception of a first security code, which comes from a first key (col. 2, lines 10-23). Treharne discloses the process as the beginning of a learn mode operation upon the receipt of the first security code in that which one must enter in second security code (comes from a second key, col. 2, lines 30-34), which is then stored in the memory 18 (col. 2, lines 51-55 and col. 3, lines 23-25).

*Allowable Subject Matter*

6. Independent claims 2, 12, 17, and 23 are allowable, because prior art of record does not expressively disclose the limitations therein:

- ❖ Claims 2 and 23: a fixed code that is the learning code in order to begin a learn mode operation upon receipt of the first rolling code by a barrier movement operator. Dependent claims 3-11 are allowable by default of being dependent upon an allowable claim.

- ❖ Claim 12: automatically beginning a learning mode upon receipt of a first rolling code. Dependent claims 13-16 are allowable by default of being dependent upon an allowable claim.
- ❖ Claim 17: amended to include allowable limitations of cancelled claim 22 of an operator system including a timer to run time between last operation of the barrier by the trained transmitter and receipt of transmission from the learning transmitter by the system. Dependent claims 18-21 are allowable by default of being dependent upon an allowable claim.

### *Conclusion*

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- ❖ Treharne et al. (UA 5508694) teaches a method and apparatus for programming a spare key into a security system.
- ❖ O'Connell et al. (US 4791280) teaches a method for operating a security device, security device and data carriers for use in the method.

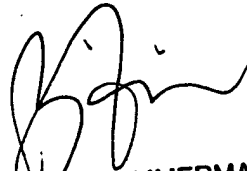
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly Jenkins whose telephone number is 703.305.8975. The examiner can normally be reached between 7am - 3:30pm from Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Horabik can be reached on 703.305.4704. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kimberly Jenkins  
Examiner  
Art Unit 2635  
9 June 2005

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BRIAN ZIMMERMAN  
PRIMARY EXAMINER